

## IV. B. What Are ARARs?

### Notes:

The fundamental purpose of ARARs is to define the minimum level of protection that must be provided by a remedy selected and implemented under CERCLA. Additional protection may be required if necessary to “protect human health and the environment” as that term is interpreted in the NCP.

This module describes the threshold regulatory criteria by which cleanup standards or requirements that are *potential* ARARs should be evaluated to determine whether they are *actual* ARARs.

Subsequent modules address many of the more specific criteria or requirements which are used to identify specific ARARs for specific sites. For example, subsequent modules address the factors and criteria for identifying chemical-, action-, and location-specific ARARS.

## Statutory Requirements What are ARARs?

- Federal environmental standards
- More stringent state standards

*What Are ARARs?*

### Notes:

Section 121 of CERCLA provides that any “standard, requirement, criteria or limitation” under any federal environmental law, or any more stringent state standard, requirement, criteria, or limitation under an environmental or facility siting law, may be an ARAR with respect to a hazardous substances *that will remain onsite* if such requirement is:

- legally applicable to the substance site, or action contemplated;
- relevant and appropriate under the circumstances;
- “substantive” in nature. The distinction between substantive and administrative requirements will be described in detail in a later module.

Remedial action taken under CERCLA must require “a level or standard of control” which at least attains such requirement.

## Determining ARARs

Must determine if requirements are:

- “Applicable” or
- “Relevant and appropriate” or
- Information “to be considered” (TBC)

*What Are ARARs?*

### Notes:

In evaluating whether a federal, or more stringent state, environmental standard, requirement, criteria or limitation qualifies as an ARAR, the lead agency must determine if the standard or requirement:

- has been “promulgated” and
- is legally applicable to the hazardous substance that will remain onsite after response action has been taken; or
- if not legally applicable, is nevertheless both relevant and appropriate under the specific circumstances at the site; or
- if not legally applicable or relevant and appropriate, is nevertheless useful information “to be considered” (TBC) in developing remedial alternatives.

In other words, ARARs must be determined on a site-by-site basis considering the specific substances that have been released, the location of each release, and the alternative actions for responding to the release under consideration at the site.

## Applicable Requirements

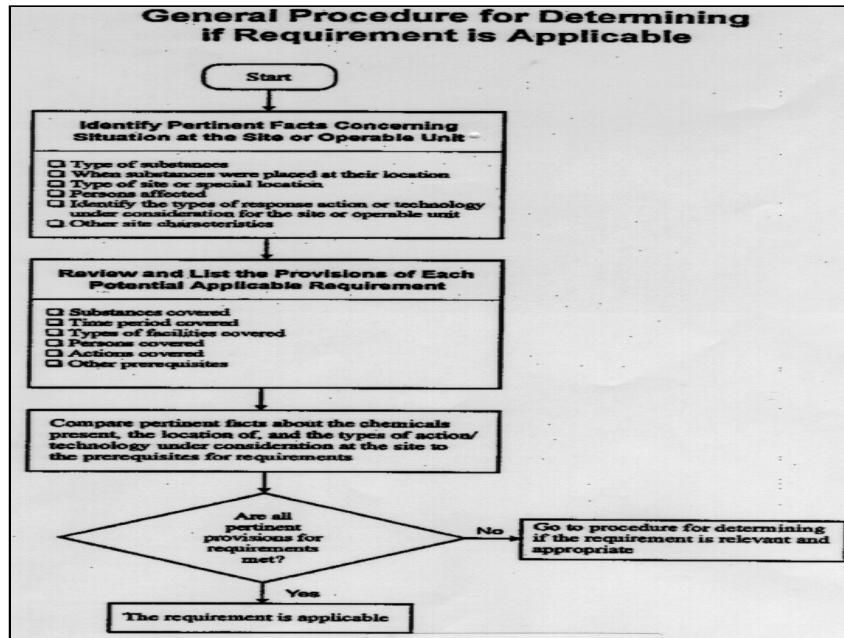
- Requirement that would be legally enforceable with respect to specific:
  - ⇒ Responsible party taking response action and
  - ⇒ Type of hazardous substance to be addressed or
  - ⇒ Action being considered or
  - ⇒ Location of the release or response action

*What Are ARARs?*

### Notes:

The most straightforward means to determine if a requirement is applicable is to determine if it is *enforceable*.

- First, the party taking the response action must be one against whom the requirement may be enforced.
- Second, the requirement must either be applicable to (i.e., enforceable) the specific substance that has been released, or the specific activity by which the response will be implemented, or the specific location in which the release has occurred or the response will be taken.
- Third, any additional jurisdictional requirements specific to the standard or limitation must be satisfied. For example, time periods to which the standard or limitation apply may limit application of the requirement.



Notes:

## Relevant and Appropriate Requirements

Requirement not applicable but

- Relevant because it addresses similar circumstances and
- Appropriate because it is well suited to the site

*What Are ARARs?*

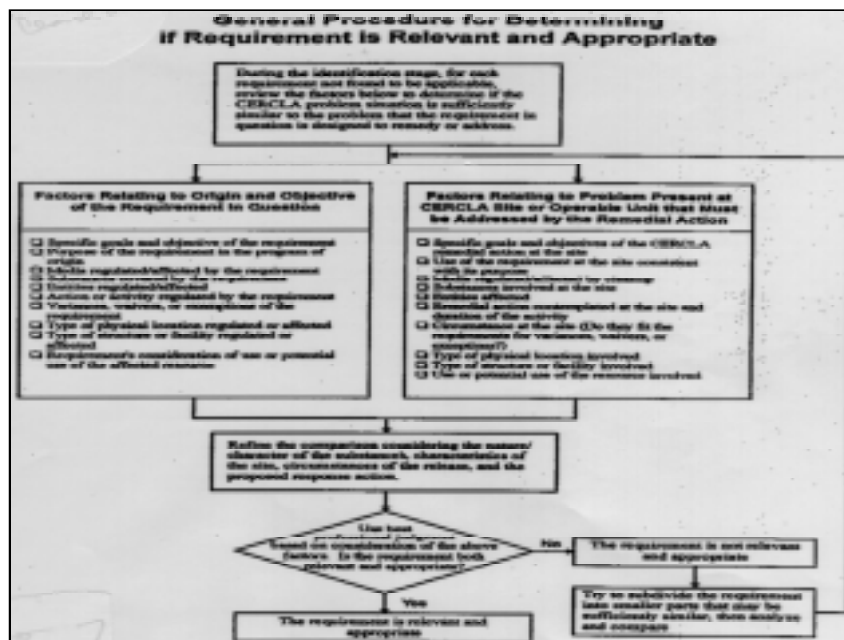
### Notes:

Determining if a requirement is relevant and appropriate, even though it is not legally enforceable, requires a two-step process.

- The first step is to evaluate whether the requirement is relevant because it generally applies to conditions that are “sufficiently similar” to those present at the site.
- The second step requires a determination as to whether the requirement is “well-suited” for application to the site (i.e., is appropriate).

For example, Safe Drinking Water Act (SDWA) standards are enforceable “at the top” but may be relevant and appropriate to groundwater that is an actual or potential drinking water source. Under such circumstances, attainment would be required in the plume of contamination.

Both determinations require a comparison, using best professional judgment, of the substances, actions, and locations at the site with those to which the requirement is legally applicable. The specific approach for identifying such chemical-, action-, and location-specific requirements is discussed in detail in the next module.



Notes:

## To Be Considered (TBCs)

- Non-promulgated advisories or guidance
  - ⇒ Health-effects information
  - ⇒ Technical information on how to perform response actions
  - ⇒ Policy documents

*What Are ARARs?*

### Notes:

TBCs are non-promulgated advisories, criteria, guidance, or proposed standards issued by federal or state government. They do not have the status of ARARs because they are not enforceable or promulgated.

TBCs may be consulted to interpret ARARs or to determine remediation goals when ARARs do not exist or are insufficient.

Compliance with TBCs is not mandatory unless the TBC is adopted by the Record of Decision (ROD).

TBCs usually fall into one of three categories,

- Health-effects information with a high degree of credibility (e.g., SDWA Health Advisories, Reference Doses, and Potency Factors).
- Technical information on how to perform or evaluate response actions (e.g., RCRA guidance on designing caps for closure).
- Policy documents (e.g., Groundwater Classification Guidelines).

The EPA Integrated Risk Information Systems (IRIS) is a computer-based catalogue of EPA assessment and risk management information for chemical substances. IRIS can be used to aid in identifying TBCs.

Contact EPA (<http://www.epa.gov>) for more information regarding IRIS.

- Example TBCs:

EPA Directive 9355.4-02, June/July 1994, provides suggested cleanup values for lead in soils.

EPA's Guidance for Cleanup of PCBs at Superfund Sites.



## Conclusion

- ARARs establish minimum cleanup levels
- ARARs evaluated site by site

*What Are ARARs?*

### Notes:

Remedial actions selected must attain a level of control of hazardous substances remaining on site that meets or exceeds the ARARs identified for that specific hazardous substance release site.

ARARs include requirements that would otherwise be legally enforceable (applicable), or that generally apply to substantially similar site conditions and are well-suited for application to the site.